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No. 84-780

Supreme Court, U.S.
FILED
DEC 21 1984
ALEXANDER L. STEVAS
CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1984

MARGARET M. HECKLER, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL., APPELLANTS

v.

STEPHEN J. ROY, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

REPLY BRIEF FOR THE APPELLANTS

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An Act of Congress has been invalidated based on the district court's judgment that appellees should not have to comply with the statutory requirement that AFDC and food stamp recipients provide their state welfare agencies with their SSNs. The validity of this statutory requirement as applied to those who seek federal welfare benefits clearly presents a substantial question of considerable importance. Appellees' attempts to dismiss the significance of this case are unavailing.

1. Appellees urge the Court to affirm the judgment below because, according to them, the government does not challenge the legal standard employed by the district court to evaluate their Free Exercise claim but instead disputes only the district court's findings of fact (Mot. to Aff. 14-15). Appellees have seriously misstated our position in their

attempt to sweep aside the important constitutional question presented by this case. As we made clear in our jurisdictional statement (at 13-15, 17-18), our concern is with the legal approach used to analyze claims that facially neutral statutory requirements violate the Free Exercise Clause.

Appellees (Mot. to Aff. 17-19, 25-26), like the district court (J.S. App. 9a, 18a-21a), focus their legal analysis solely on the number of persons who potentially might seek a religious exemption from the SSN requirement. In our view, however, the "least restrictive alternative" inquiry in Free Exercise cases must focus on the programmatic interests furthered by the statutory requirement at issue — in this case, verifying eligibility, preventing and detecting fraud, and promoting efficient administration of massive government programs. If the government can accomplish its objectives equally well by adopting a less restrictive alternative applicable to the populace as a whole, then it may be appropriate to require the government to adopt that alternative in the case of a particular plaintiff. But if SSNs are required to accomplish Congress's general goals in the administration of federal welfare programs, then the government should not be required to devise alternatives simply because the granting of a handful of exemptions might work only a marginal interference with its legislative purposes. Cf. *Regan* v. *Time, Inc.* No. 82-729 (July 3, 1984), slip op. 16 n.12 ("[I]n determining whether a time, place, and manner regulation substantially serves the State's interest, the effectiveness of the regulation should not be measured solely by the adverse consequences of exempting a particular plaintiff from the regulation."). Despite appellees' denials, therefore, it is clear that the government's challenge to the judgment below rests on our submission that the district court employed an erroneous legal analyis.

Moreover, when placed in proper perspective, there is no doubt that the question is substantial. As much as it may distress appellees and others, there is no escaping the fact that government programs and government itself have grown to enormous proportions. See *Heckler* v. *Campbell*, 461 U.S. 458, 461 n.2 (1983). As the Court recognized in *Braunfeld* v. *Brown*, 366 U.S. 599, 606 (1961), there comes a point at which accommodation of religious beliefs "radically restrict[s] the operating latitude of the legislature." A decision that Congress may not require all persons who seek federal welfare benefits to comply with facially neutral administrative requirements essential to sound administration of the programs at issue crosses the line between sensible accommodation and radical restriction on the operating latitude of the legislature. No decision of this Court requires the government to design individually-tailored eligibility standards to satisfy the most idiosyncratic religious beliefs, even if there is no question concerning the sincerity of those beliefs.

2. The "least restrictive alternative" inquiry in Free Exercise cases becomes relevant only after it is determined that the plaintiff has a sincerely held religious objection to the requirement at issue and that the requirement serves a compelling governmental interest. In the present case, the first point is not in dispute. Moreover, until the filing of appellees' motion to affirm, neither was the second point at issue. Appellees now argue, however, that the SSN requirement does not serve a compelling governmental interest (Mot. to Aff. 10-14). In this instance, it is appellees who ask the Court to disregard the district court's contrary findings (see J.S. App. 15a, 18a, 32a) as well as their own prior admissions (see, *e.g.*, Mot. to Aff. App. 6a-8a; 5/17/84 Tr. 26) that the SSN requirement serves important governmental interests in a programmatic sense. Appellees' attack on

the importance of the SSN requirement, like their legal arguments, focuses exclusively on the effect of granting an exemption to Little Bird of the Snow alone (Mot. to Aff. 17-24). But as we have consistently argued, that is not the issue in this case. Appellees offer no credible argument to refute the clear evidence (see J.S. 8-10) that the AFDC and Food Stamp programs cannot be effectively managed in the absence of the SSN requirement.[1]

In any event, appellees' contention that the government lacks a compelling interest in verifying eligibility, preventing and detecting fraud, and administering massive welfare programs effectively and efficiently is simply frivolous. See *e.g., Alcarez* v. *Block*, 746 F.2d 593, 606 (9th Cir. 1984). Appellees rely (Mot. to Aff. 12) on *Sherbert* v. *Verner*, 374 U.S. 398, 407 (1963), in which the Court held that the *unsubstantiated potential* for fraud and abuse is not a

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[1]Appellees argue (Mot. to Aff. 21 n.10) that a government manual introduced at trial demonstrates that factors other than SSNs have a higher degree of reliability for purposes of cross-matching than do SSNs. Appellees neglect to point out, however, that the manual on which they rely is out of date and no longer used (5/21/84 Tr. 116-117). birthdate into a Social Security Administration computer. From this fact, ote (Mot. to Aff. 21-22) that the existence appellees appear to argue of the Snow's SSN was determined by entering her name and (*ibid.*) that the possibility of conducting searches by name and birthdate obviates the need for SSNs. Appellees again neglect to mention a crucial fact, which is that the only information that can be discovered by the type of search conducted in this case is whether or not a person has an SSN. 5/22/84 Tr. 13, 110. The computer system used for this purpose, known as the "Alphadent" system, obviously is necessary to process applications for SSNs and obviously must rely principally on a person's name and birthdate. But it serves none of the functions necessary in the administration of the AFDC and Food Stamp programs, such as verification of income and resources, because that type of information is maintained in other computer systems that are most commonly accessed by SSNs.

compelling state interest.[2] Here, by contrast, it is undisputed that fraud and abuse in federal welfare programs are real and susbstantial problems on which Congress has focused considerable attention. See, *e.g.*, J.S. 19-20; J.S. App. 7a, 15a; Mot. to Aff. App. 7a. It cannot seriously be urged that the government lacks a compelling interest in ensuring that expenditures of nearly $20 billion per year (see J.S. 8) are properly spent.

3. Appellees beg the question in this case by arguing (Mot. to Aff. 34-38) that the district court's decision is consistent with the intent of Congress to grant welfare benefits to needy individuals. Congress imposed certain requirements on benefit recipients, and the SSN requirement is one of them. Appellees are unable to demonstrate any congressional intent to confer benefits on individuals who refuse to comply with the statutory requirements for eligibility. See *Schweiker* v. *Hansen*, 450 U.S. 785, 790

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[2]The Court wrote (374 U.S. at 407):

> The [State] suggest[s] no more than a possibility that the filing of fraudulent claims by unscrupulous claimants feigning religious objections to Saturday work might * * * dilute the unemployment compensation fund * * *. But that possibility is not apposite here because no such objection appears to have been made before the South Carolina Supreme Court * * *. Nor, if the contention had been made below, would the record appear to sustain it; there is no proof whatever to warrant such fears of malingering or deceit as those which the respondents now advance.

Not only was the possibility of fraud in *Sherbert* wholly speculative, but it also related to fraudulent *religious* claims. In the present case, by contrast, there is no dispute concerning the sincerity of Roy's religious beliefs, nor does the government contend that many people are likely to feign religious objections to the SSN requirement. Rather, the government's concern with fraud relates to the entirely distinct matter of persons attempting to obtain welfare benefits in contravention of the eligibility standards established by Congress. There is nothing speculative about this concern, nor has any decision of this Court dismissed it as an insubstantial interest.

(1981) (Congress conditioned the receipt of Social Security benefits on the filing of a written application, and a "court is no more authorized to overlook [this requirement] than it is to overlook any other valid requirement for the receipt of benefits."). Obviously, it is appellees' position, and not the government's, that thwarts Congress's intent to provide benefits only to those persons who satisfactorily demonstrate their entitlement to them.

Nor is there any merit to appellees' argument (Mot. to Aff. 36-38) that denial of welfare benefits to Little Bird of the Snow would constitute discrimination based on religion. Appellees' reliance (*ibid.*) on the American Indian Religious Freedom Act (AIRFA), 42 U.S.C. 1996, is particularly misplaced. AIRFA was intended only to ensure that Native Americans receive the same protection under the First Amendment to which all Americans are entitled; it was not intended to grant Native Americans any greater rights. See 124 Cong. Rec. 21444 (1978) (remarks of Rep. Udall); U.S. Dep't of the Interior, *American Indian Religious Freedom Act Report* 18 (1979) ("This act is in no way intended to alter that guarantee [of the Free Exercise Clause] or override existing laws, but is designed to prevent government actions that would violate these Constitutional protections."). Moreover, the operative provision of AIRFA has been satisfied and exhausted. The Act contains only two sections, a policy statement and an operative provision. The operative provision, contained in Section 2 of the Act, 42 U.S.C. 1996 note, required that the President direct federal agencies to evaluate their policies and procedures "in consultation with native traditional religious leaders" and report their findings to Congress within 12 months. This requirement was fulfilled when the President released the *American Indian Religious Freedom Act Report* in August 1979. Thus, all that remains of AIRFA is the policy section which, as noted

above, in no way broadened the scope of protection for religious freedom beyond that afforded by the First Amendment itself.

4. Finally, appellees are unable to offer any satisfactory rationale to justify the district court's issuance of an injunction prohibiting Secretary Heckler from "using or disseminating" the SSN that was assigned to Little Bird of the Snow at the request of her mother, appellee Miller. Appellees argue (Mot. to Aff. 40-41) that they would be injured by the government's use of Little Bird of the Snow's SSN. Assuming that to be so, the injury is not legally cognizable. The Free Exercise Clause prevents government from forcing one to act or think in contravention of one's religious beliefs, but that is all. If the Secretary were to use and disseminate Little Bird of the Snow's SSN, appellees would not be forced to join in that act or to believe that it was proper. Their potential distress at witnessing the act simply does not implicate rights protected by the Free Exercise Clause.

For the foregoing reasons, as well as those set forth in our jurisdictional statement, probable jurisdiction should be noted.

Respectfully submitted.

REX E. LEE
Solicitor General

DECEMBER 1984

DOJ-1984-12